IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 416 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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RAGHUVIRSINH MULVAJI JADEJA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 416 of 2002

MR BB NAIK for Petitioner No. 1

MR PR ABICHANDANI, APP, for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/10/2002

ORAL JUDGEMENT

1. This revision application arises out of a judgment and order rendered by learned Additional Sessions Judge, Kutch, at Gandhdham, in Criminal Revision Application No.39 of 2002, on October 9, 2002. The said revision application arose out of an order passed by learned Judicial Magistrate, First Class, at Bhachau, on September 18, 2002, in connection with Aadhoi Police Station C.R.-I No.45 of 2002, for offences punishable under Sections 407, 467, etc., rejecting prayer for remand of the accused-present revisioner to police custody for a period of five days. The learned Additional Sessions Judge accepted the revision application and granted remand of the accused-present revisioner to police custody for a period of five days by the impugned judgment and order. The said order dated October 9, 2002 came to be challenged by the present revision application, which was preferred on October 11, 2002 and, this Court, while admitting this revision

application, has suspended the operation of the said order.

2. The facts of the case, in brief, can be stated thus:-

2.1 An information was received by Aadhoi Police Station to the effect that three trucks containing coal were to pass through. The coal was derived out of illicit cutting of the forest product and, therefore, they should give a close scrutiny to the pass, permit, etc. On checking, three trucks were intercepted and on questioning of the drivers and verification of the papers, it was found that they contained coal, but the transit pass and other passes purportedly to have been issued by Gram Panchayat were counterfeit and forged. The drivers also came to be arrested and from their interrogation, it was found that the trucks belonged to Khalid Ibrahim Mokha, Ramnu Ibrahim Mokha and Mavji Bachu Ahir. They also came to be interrogated by the police and, as per the prosecution case, it was revealed that present revisioner and his son Sampatsinh are the real owners of the coal in question and that they are instrumental in illicit cutting, transit and sale of the coal. The police could apprehend son of the revisioner and he was taken on police remand for 10 days. As per the investigating agency, present revisioner was avoiding arrest and he could be apprehended only on the 17th September, 2002, as against the incident of 13th May, 2002. The police, therefore, prayed for remand of the revisioner for a period of five days. The learned Magistrate, after considering the investigation papers, rejected the said application. While doing so, he observed that statement of Talati-cum-Mantri, Bhartiben, was recorded by the Investigating Officer on the 29th May, 2002, wherein she categorically admitted to have issued the passes in question, to have affixed the rubber stamp thereon and to have signed the passes. The purpose for which remand was sought was that the details of the fake stamp and the forged signature on the passes are to be obtained from the revisioner. The learned Magistrate, therefore, rejected the application.

2.2 The learned Additional Sessions Judge passed the on the premise that the revisioner is an Officer of the Forest Department and is indulged in the scam of illicit coal-making out of Babool trees of the Forest Department and that he is not co-operating with the invesigation by not giving information.

3. Heard learned Advocate, Mr. Naik, for the

revisioner and learned Additional Public Prosecutor, Mr. Abichandani, for the respondent-State. Mr. Abichandani is assisted by Police Officer from Adhoi Police Sation and has the investigation papers with him, which he has shown to this Court.

3.1 Mr. Naik states that the revisioner is a heart patient. He has undergone a by-pass surgery in 1999 and the relevant papers were produced before the Magisterial Court.

4. Considering the rival side contentions, it transpires that the revisioner is working as a Forester in Forest Department. On a previous tip-off, the police intercepted three trucks and on interrogation of drivers and owners of the vehicle, they have arrested the revisioner's son and taken him on police remand for ten days. It also appears that nothing seems to have come out of his interrogation. It also transpires that even interrogation of the present revisioner did not reveal anything and, therefore, it is stated that both of them are throwing the burden on each other. Apart from this, what is imporant to be noted is that the statement of Talati-cum-Mantri, Bhartiben, was recorded, for the first time, on May 29, 2002, wherein she states that she was on leave from 14th May, 2002. She also states that, on 13th May, 2002, while she was on duty, she had issued those passes after putting her signature and affixing the rubber stamp. Till that point of time, she does not say anything about the forging of the signature or counterfeiting the rubber stamp. However, her statement was again recorded on June 25, 2002, where she takes a somersault and says that signature is nor her, stamp is not original, so on and so forth. The fact, however, remains that after ten days of interrogation, the revisioner's son was not able to say anything. Even revisioner's interrogation has also not led the investigating agency anywhere. Recording of two statements of same person going contrary to each other reflects on the witness or quality of investigation and this Court is of the view that for grant of remand, no case is made out. When a man says that he knows nothing about a particular aspect, police remand is not to be used for coercing him or extracting a statement against himself. No legitimate reason is indicated except that the revisioner is a Forest Officer and he is involved in a scam or that he is not giving details about who forged the signature or stamp. Remand to police for such cause, in light of statement of Bhartiben, is uncalled for. Therefore, in the opinion of this Court, remand ought not to have been granted. Interference by this Sessions

Court was uncalled for in exercise of revisional powers. The revision application, therefore, deserves to be allowed and the same is allowed. The judgment and order of the learned Additional Sessions Judge, Kutch, at Gandhidham, in Revision Application No.39 of 2002 is hereby set aside. The revisioner is in judicial custody, as per the statement made at the Bar by Mr. Naik. Rule is made absolute.

[A.L. DAVE, J.]

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